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APPENDIX VII REGULATORY

VII-1. Background. The Regulatory program protects the aquatic environment by regulating dredge and fill and other construction-related activities in jurisdictional waters of the United States. This responsibility is mandated by the Clean Water Act and the Rivers and Harbors Act of 1899 and other laws. The Corps evaluates and issues over 100,000 permits a year for projects with potential impacts on waters of the United States, including wetlands.

VII-2. Objectives. The Regulatory Objectives and Performance Measures are provided below in Table VII-1, "Regulatory Goals and Performance Measures." These goals and performance measures were developed through a collaborative process with the Corps and OMB and are taken from the Program Analysis and Review Tool (PART) program administered by OMB. The Performance Measures were developed to link the Regulatory Budget to performance that would provide data on the effectiveness of the program. For example, the Objective "No Net Loss of Aquatic Resources" would be defined by data captured through Performance Measures 1 through 6. Based on the national budget priorities, the Corps would be provided funds to administer the Program. Because the Corps Regulatory program is predominantly a labor-based program, dollars allocated to the Program are directly correlated to the target percentages for each of the Performance Measures. The percentage targets for each of the performance measures are designed to judge performance of these objectives based on available budget and to provide information on the veracity of data for the overall Program Goals. For example, data collected during compliance visits (i.e., percent of sites meeting performance criteria) provide information on the success of the Program Goal of "Avoidance and Minimization of Impacts" by confirming the requirements placed on applicants are completed as permitted and entered in the database. Higher target percentages for Performance Measures will result in more comprehensive data which will provide a better measure of success for the Objectives.

VII-3. Civil Works Five Year Development Plan. The Civil Works Five Year Development Plan is designed to provide a framework under which a five-year funding plan will produce results that contribute to achievement of the strategic goals and objectives in the Civil Works Strategic Plan. For the Regulatory program, the proposed increments included in this EC were developed to provide the glide path to get the program to its target goals within the proposed five-year plan. The focus of the plan is to undertake projects and activities that provide the highest net economic and environmental returns on the Nation's investment.

VII-4. Activities. The program has historically categorized, allocated, and expended funds within the following categories:

Activity	Category
Permit Evaluation	100
Enforcement and Resolution	210
Studies	300
Other Regulations	400
Environmental Impact Statements	500
Administrative Appeals	600
Compliance: Authorized activities and mitigation	800

This categorization allows the program managers to distribute funds in particular categories and track utilization. These accounts will also provide information on the effectiveness of the program within each of the categories.

TABLE VII-1 Regulatory Goals and Performance Measures	
Program Goals	Performance Measures
No Net Loss of Aquatic Resources Avoidance and Minimization of Impacts to Aquatic Resources	1. Individual Permit Compliance The Corps shall complete compliance inspections on XX% of all individual permits issued and constructed within the preceding fiscal year.
	2. General Permit Compliance. The Corps shall complete compliance inspections of XX% of all General Permits (GPs and NWP) with reporting requirements issued and constructed within the preceding fiscal year.
	3. Mitigation Site Compliance The Corps shall complete field compliance inspections of XX% of active mitigation sites each fiscal year. Active mitigation sites are those sites authorized through the permit process and are being monitored as part of the permit process but have not met final approval under the permit special conditions (success criteria).
	4. Mitigation Bank/In Lieu-Fee Compliance The Corps shall complete compliance inspections/audits on XX% of active mitigation banks and in lieu fee programs annually.
	5. Resolution of Non-compliance Issues. The Corps will reach resolution on non-compliance with permit conditions and/or mitigation requirements on XX% of activities determined to be non-compliant at the end of the previous fiscal year and determined to be non-compliant during the current fiscal year.
	6. Resolution of Enforcement Actions. The Corps shall reach resolution on XX% of all pending enforcement actions (i.e., unauthorized activities) that are unresolved at the end of the previous fiscal year and have been received during the current fiscal year.
Expedite Permit Processing	7. General Permit Decisions. The Corps shall reach permit decisions on XX% of all General Permit applications within 60 days.
	8. Individual Permits. The Corps shall reach permit decisions on XX% of all Standard Permits and Letters of Permission (LOPs) within 120 days. This standard shall not include Individual Permits with Formal Endangered Species Act (ESA) Consultations.

VII-5. Performance Measures:

a. Performance Measure 1. Individual Permit Compliance. The Corps shall complete compliance inspections of XX% of all individual permits issued and constructed (or under construction) within the preceding fiscal year (may use compliance certification forms in accordance with NWP General Condition 14 to determine which projects to inspect).

b. Performance Measure 2. General Permit Compliance. The Corps shall complete compliance inspections of XX% of all General Permits (GPs and NWPs) with reporting requirements issued and constructed (or under construction) within the preceding fiscal year (May use compliance certification forms in accordance with NWP General Condition 14 to determine which projects to inspect).

c. Performance Measure 3. Mitigation Site Compliance. The Corps shall complete field compliance inspections of XX% of active mitigation sites each fiscal year. Active mitigation sites are those sites authorized through the permit process and are being monitored as required by the permit conditions but have not met final approval under the permit special conditions (success criteria). The measure does not include mitigation banks and in lieu fee programs.

d. Performance Measure 4. Mitigation Bank/In Lieu Fee Compliance. The Corps shall complete compliance inspections/audits on XX% of active mitigation banks and in lieu fee programs annually.

e. Performance Measure 5. Resolution of Non-Compliance Resolution with Permit Conditions. The Corps will reach resolution on non-compliance with permit conditions and/or mitigation requirements on XX% of activities determined to be non-compliant at the end of the previous fiscal year and determined to be non-compliant during the current fiscal year. Resolution for this measure shall include removal of the fill material, processing of an After-The-Fact permit, a requirement to complete some type of compensatory mitigation (voluntary restoration or payment of in-lieu fees), referral to EPA or Assistant US Attorney (AUSA), or resolution by the requirement for monetary compensation as a punitive measure.

f. Performance Measure 6. Resolution of Unauthorized Activities. The Corps shall reach resolution on XX% of all pending enforcement actions (i.e., unauthorized activities) that are unresolved at the end of the previous fiscal year and have been received during the current fiscal year. Resolution for this measure shall include removal of the fill material, processing of an After-The-Fact permit, a requirement to complete some type of compensatory mitigation (voluntary restoration or payment of in-lieu fees), referral to EPA or AUSA, or resolution by the requirement for monetary compensation as a punitive measure.

g. Performance Measure 7. Processing of General Permits. The Corps shall reach permit decisions on XX% of all General Permit applications within 60 days.

h. Performance Measure 8. Processing of Individual Permits. The Corps shall reach permit decisions on XX% of all Standard Individual Permits and Letters of Permission (LOPs) within 120 days. This standard shall not include Individual Permits with formal Endangered Species Act (ESA) Consultations.

VII-6. General Submission Guidance. Data will be entered into the P2 Program and District/Division resource requests will be generated in a report. A separate Budget (inactive) WBS will be added below the existing WBS. Data will be input to reflect resource needs for the funding levels outlined in VII-9. MSC's must insure that submissions reflect uniform and consistent levels of work effort among the

districts and those submissions accurately reflect the required level of service. Resources required by the division should be programmed under Expenses. However, one Level 1 Regulatory activity should be submitted to cover costs for a single GS-13/YD-2 Appeal Review Officer at the division. It will not be submitted under a selected district but as a division project.

VII-7. Types of Activities (Projects) and Work Functions. Resource needs under the Regulatory appropriation should be submitted for up to seven activities (projects). Resources will be further identified according to P2 Resource codes. The seven Regulatory activities are Permit Evaluation- 100, Enforcement- 210, Studies-300, Other Regulations-400, Environmental Impact Statements (EISs)-500, Administrative Appeals-600, and Compliance- 800.

VII-8. Definition of Activities (Project) Categories. Regulatory is divided into seven activity categories:

a. Permit Evaluation (100). Includes all costs related to the review and evaluation of permit applications under Section 9, 10, 103 and 404 as well as environmental assessments supporting this review. Cultural resource investigations, jurisdiction determinations, public hearings, and other activities related to application evaluation are included as are general permit development and consideration of activities under general permits. Cost for support items such as automated permit tracking systems or other computer or micrographic support and equipment purchases should be identified in description/argument. All resource requests will be entered in the sub-accounts 110 for Standard Permits (Individual, Letter of Permission and Denial), 120 (General Permits – including development) and 130 (Other permit work not involving specific permits).

b. Enforcement (210). Includes all costs related to those activities associated with unauthorized activities and jurisdiction determinations related to enforcement actions, ground and aerial surveillance, and follow-up on violations. Historically, approximately 18% to 25% of national resources were allocated for enforcement, including compliance costs. Establishment of the Compliance category has necessitated a re-appraisal of the enforcement costs without inclusion of compliance efforts.

c. Studies (300). Includes all costs related to studies such as jurisdiction studies (actual jurisdiction determinations are included under permit evaluation), mapping, wetland studies, shoreline inventories, and collection of data for environmental databases. Resource requests must be grouped by an identified and defined specific study. Studies may be submitted at any level depending on their priority; however, it is recommended that funds for studies be prioritized after all on board (mid FY 06) labor is covered.

d. Other Regulations (400). Includes all costs related to administration of the miscellaneous regulations such as danger zones and restricted areas, plus review of Section 402 applications. Recent security concerns may require a need for funds for administration of restricted areas and danger zones.

e. Environmental Impact Statements (EISs) (500). Includes all costs required for preparation of EISs when Corps is the lead or a cooperating agency. In most cases, these costs are associated with Corps review and management only; applicants are responsible for development and analysis. Approval by the MSC and Headquarters is required where the Corps Regulatory Program proposes to provide more than management and review services for any EIS. Resource requests will be grouped by identified and defined EISs. Any new project-specific EISs will be resourced under the Branch organization codes since review will occur in the Regulatory branch. Some resource requests for programmatic EISs may require support from other offices and those organization codes should be used. All EISs must be identified as either ongoing or projected and the percent probability of the EIS being required should be indicated. Costs associated with the review of non-Corps EISs are included under

Permit Evaluation, unless the review is of an in-depth nature requiring more than \$5,000. No request for EIS may be submitted where the EIS is not specifically identified. Costs for EIS's may be submitted at Level 1 and 2 if the EIS is on going or a determination has been made it will be undertaken. An EIS, where there has been a preliminary decision that it will likely be needed, should be placed in Level 3, ranked below any request tied to performance.

f. Administrative Appeals (600). Costs to support one grade 13/YD-2 Appeal Review Officer, in Level 1, for Regulatory decisions, including travel and related costs, at division offices; and any appeals costs at districts.

g. Compliance (800). Includes all costs related to compliance inspections for a percentage of the authorized activities and mitigation sites (including mitigation banks, in-lieu fee programs, and site specific mitigation). This category includes costs associated with resolution of non-compliance found as part of inspections as well as administrative civil penalties for non-compliance.

VII-9. Definition of Resources.

a. Labor (LABOR). Fully burdened labor costs required to pay salaries and benefits of personnel (except contracted personnel) and normal office operational costs to support these personnel according to the service provided at each level, i.e., only manpower and costs related to manpower necessary to meet the performance measures should be included at that level. Labor will be input by organization code (Regulatory, all support by other District elements, and work by other Corps elements). At the third level, additional manpower may be shown but in requests ranked below those needed to meet the performance goals. Items to include are: overhead costs not separately charged under another P2 resource code such as rent, utilities, communications, computer systems, travel, training, reproduction, supplies, etc.

b. Vehicle Costs (GSAVEH). All projected vehicle costs to perform work at the identified activity level.

c. Printing (PRINTING). All printing costs associated with the identified activity level.

d. Other contractual services (OTHCONSVC). Any contractual services required at the identified activity level. All mission support type contracts must be listed (new or renewal of existing contracts). Examples of work to be shown are: aerial photography; inspection contracts; cost sharing agreements with states or other Federal agencies; contractual personnel; personnel from other agencies paid with Regulatory funds; data gathering contracts.

e. Travel (TRAVEL). All direct-charged travel costs required to meet goals of identified activity level.

f. Any other appropriate P2 resource code required to meet stated Regulatory Program goals. Resources shall be entered at the appropriate activity and funding level.

g. Data and Database Costs. Costs associated with the required hardware support for the spatial database (ORM-2) should be provided in supplemental comments and be included in the totals for Level 2 funding. Districts should coordinate with the local IM personnel and Institute for Water Resources (IWR) to develop a strategy to maintain computer hardware that meet the minimum ORM-2 hardware requirements (or greater) and that meet the federal buy program standards for staff work stations. Districts should consider submitting budget requests for priority data acquisition (beyond that provided by

HQ and other sources) if it is determined to be critical for analysis of project impacts, cumulative impacts, and mitigation within targeted watersheds.

VII-10. Funding Levels and Increments. District Regulatory resource requirements should be submitted in three Funding Levels including Increments for performance, non-performance mandatory work, and non-mandatory non-performance related work as described below. The Level 1 Funding program is designed to provide a balanced, fully operational, albeit reduced, program with the performance targets specified in Increment 1.

Costs to support more than one performance measure may be combined provided the request includes only costs to meet the measures for one of three program categories (permit evaluation, enforcement, and compliance). For Performance Measure 8, insure funds are included to process all Individual Permits while meeting the standard for those permits with no ESA requirement. Funding arguments should indicate differences or similarities with current levels of effort. Requests for new FTEs (not authorized in mid FY 2006) must be identified as new FTEs in the Labor resource description. Increment 2 and Increment 3 reflect the additional resources required to meet performance measure targets indicated below. Total Funding levels for Level 1 should include Increment 1 and any additional resources required for Increment 4, mandatory non-performance related work (Includes work in categories 130, 400, and 600. Resource requests for Increment 5 (high priority SAMPS and/or other watershed management plans, GIS analytical tools, acquisition of spatial data sets, and/or development of spatial assessment tools may be submitted within Total funding for Level 2 or 3 if they will provide significant benefit to management of the program workload.

a. **Increment 1.** Resource requests should be submitted with Increment 1 (minimum) requirements allowing the performance as defined below. Increment 1 reflects the FY 07 performance targets that are currently in place. Increment 1 was designed to provide a balanced, fully operational, albeit reduced, program with the following performance targets.

Compliance requests(s) to meet the following levels of performance:

Performance Measure 1	Individual Permit Compl Insp	Level 1 Target: 10%
Performance Measure 2	General Permit Compl Insp	Level 1 Target: 5%
Performance Measure 3	Mitigation Site Compl Insp	Level 1 Target: 10%
Performance Measure 4	Mitigation Bank/ILF Compl Insp	Level 1 Target: 25%
Performance Measure 5	Resolution of Non-compliance	Level 1 Target: 25%

Enforcement requests(s) to meet the following level of performance:

Performance Measure 6	Resolution of Unauthorized Activities	Level 1 Target: 25%
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Permit Evaluation requests(s) to meet the following levels of performance:

Performance Measure 7	Processing of General Permits	Level 1 Target: 75%
Performance Measure 8	Processing of Individual Permits	Level 1 Target: 50%

b. **Increment 2.** The incremental increase of all resource requests at Increment 2 should allow the district to provide (but not exceed) the following increased levels of service and performance. Increment 2 was designed to meet the performance goals for permit processing along with an increase in compliance and enforcement efforts from Increment 1. Some additional requests, not directly contributing to meeting the measures may be submitted provided they are essential to support the other resources needed to meet the performance targets below.

Compliance request(s) to meet the following levels of performance:

Performance Measure 1	Individual Permit Compl Insp	Level 2 Target: 20%
Performance Measure 2	General Permit Compl Insp	Level 2 Target: 10%
Performance Measure 3	Mitigation Site Compl Insp	Level 2 Target: 20%
Performance Measure 4	Mitigation Bank/ILF Compl Insp	Level 2 Target: 75%
Performance Measure 5	Resolution of Non-compliance	Level 2 Target: 30%

Enforcement request(s) to meet the following level of performance:

Performance Measure 6 Resolution of Unauthorized Activities Level 2 Target: 30%

Permit Evaluation request(s) to meet the following levels of performance:

Performance Measure 7	Processing of General permits	Level 2 Target: 90%
Performance Measure 8	Processing of Individual Permits	Level 2 Target: 75%

c. **Increment 3.** Additional incremental requests should be submitted to meet the increased performance standards identified below for Level 3. The requirements for the Level 3 requests represent the fully funded program, meeting all stated Program Objectives. After requests have been submitted to meet the performance targets, additional, non-mandatory requests to enhance the program may be submitted. NOTE: Districts which are currently exceeding any of the performance measure targets in Level 3, costs for manpower in these areas should be redirected to work to support the other performance measures.

Compliance package(s) to meet the following levels of performance:

Performance Measure 1	Individual Permit Compl Insp	Level 3 Target: 50%
Performance Measure 2	General Permit Compl Insp	Level 3 Target: 20%
Performance Measure 3	Mitigation Site Compl Insp	Level 3 Target: 30%
Performance Measure 4	Mitigation Bank/ILF Compl Insp	Level 3 Target: 100%
Performance Measure 5	Resolution of Non-compliance	Level 3 Target: 40%

Enforcement package(s) to meet the following level of performance:

Performance Measure 6 Resolution of Unauthorized Activities Level 3 Target: 40%

Permit Processing Requirements None required
(Level 2 meets stated goal for Measures 7 and 8).

d. **Increment 4.** All mandatory, non-performance related work (e.g. work in categories 130, 400, 600)

e. **Increment 5.** All non-mandatory, non-performance related work (e.g. work in categories 300 and 500)

VII-11. FTE Output Measures. All requests for Regulatory labor shall result in a calculation of FTEs by one of the P2 tools. *IMPORTANT:* In order to insure that labor requests are funded, districts should be certain that the appropriate number of FTEs is reflected; a zero will result in a resource request being

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